



Rep. Joseph M. Lyons

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LRB097 10833 CEL 52143 a

1 AMENDMENT TO HOUSE BILL 3050

2 AMENDMENT NO. _____. Amend House Bill 3050 on page 1, line
3 5, after "9.1,", by inserting "10, 10.1,"; and

4 on page 5, line 5, by replacing "Secretary ~~Director~~" with
5 "Secretary and the Director"; and

6 on page 6, line 20, by replacing "Secretary ~~Director~~" with
7 "Secretary and the Director"; and

8 on page 9, line 6, by replacing "Secretary" with "office"; and

9 on page 9, line 11, by replacing "Secretary ~~Director~~" with
10 "Secretary and the Director"; and

11 on page 9, line 23, by replacing "activities or operates" with
12 "any activity"; and

1 on page 21, immediately below line 3, by inserting the
2 following:

3 "(205 ILCS 305/10) (from Ch. 17, par. 4411)

4 Sec. 10. Credit union records; member financial records.

5 (1) A credit union shall establish and maintain books,
6 records, accounting systems and procedures which accurately
7 reflect its operations and which enable the Department to
8 readily ascertain the true financial condition of the credit
9 union and whether it is complying with this Act.

10 (2) A photostatic or photographic reproduction of any
11 credit union records shall be admissible as evidence of
12 transactions with the credit union.

13 (3) (a) For the purpose of this Section, the term "financial
14 records" means any original, any copy, or any summary of (1) a
15 document granting signature authority over an account, (2) a
16 statement, ledger card or other record on any account which
17 shows each transaction in or with respect to that account, (3)
18 a check, draft or money order drawn on a financial institution
19 or other entity or issued and payable by or through a financial
20 institution or other entity, or (4) any other item containing
21 information pertaining to any relationship established in the
22 ordinary course of business between a credit union and its
23 member, including financial statements or other financial
24 information provided by the member.

25 (b) This Section does not prohibit:

1 (1) The preparation, examination, handling or
2 maintenance of any financial records by any officer,
3 employee or agent of a credit union having custody of such
4 records, or the examination of such records by a certified
5 public accountant engaged by the credit union to perform an
6 independent audit.

7 (2) The examination of any financial records by or the
8 furnishing of financial records by a credit union to any
9 officer, employee or agent of the Department, the National
10 Credit Union Administration, Federal Reserve board or any
11 insurer of share accounts for use solely in the exercise of
12 his duties as an officer, employee or agent.

13 (3) The publication of data furnished from financial
14 records relating to members where the data cannot be
15 identified to any particular customer of account.

16 (4) The making of reports or returns required under
17 Chapter 61 of the Internal Revenue Code of 1954.

18 (5) Furnishing information concerning the dishonor of
19 any negotiable instrument permitted to be disclosed under
20 the Uniform Commercial Code.

21 (6) The exchange in the regular course of business of
22 (i) credit information between a credit union and other
23 credit unions or financial institutions or commercial
24 enterprises, directly or through a consumer reporting
25 agency or (ii) financial records or information derived
26 from financial records between a credit union and other

1 credit unions or financial institutions or commercial
2 enterprises for the purpose of conducting due diligence
3 pursuant to a merger or a purchase or sale of assets or
4 liabilities of the credit union.

5 (7) The furnishing of information to the appropriate
6 law enforcement authorities where the credit union
7 reasonably believes it has been the victim of a crime.

8 (8) The furnishing of information pursuant to the
9 Uniform Disposition of Unclaimed Property Act.

10 (9) The furnishing of information pursuant to the
11 Illinois Income Tax Act and the Illinois Estate and
12 Generation-Skipping Transfer Tax Act.

13 (10) The furnishing of information pursuant to the
14 federal "Currency and Foreign Transactions Reporting Act",
15 Title 31, United States Code, Section 1051 et sequentia.

16 (11) The furnishing of information pursuant to any
17 other statute which by its terms or by regulations
18 promulgated thereunder requires the disclosure of
19 financial records other than by subpoena, summons, warrant
20 or court order.

21 (12) The furnishing of information in accordance with
22 the federal Personal Responsibility and Work Opportunity
23 Reconciliation Act of 1996. Any credit union governed by
24 this Act shall enter into an agreement for data exchanges
25 with a State agency provided the State agency pays to the
26 credit union a reasonable fee not to exceed its actual cost

1 incurred. A credit union providing information in
2 accordance with this item shall not be liable to any
3 account holder or other person for any disclosure of
4 information to a State agency, for encumbering or
5 surrendering any assets held by the credit union in
6 response to a lien or order to withhold and deliver issued
7 by a State agency, or for any other action taken pursuant
8 to this item, including individual or mechanical errors,
9 provided the action does not constitute gross negligence or
10 willful misconduct. A credit union shall have no obligation
11 to hold, encumber, or surrender assets until it has been
12 served with a subpoena, summons, warrant, court or
13 administrative order, lien, or levy.

14 (13) The furnishing of information to law enforcement
15 authorities, the Illinois Department on Aging and its
16 regional administrative and provider agencies, the
17 Department of Human Services Office of Inspector General,
18 or public guardians: (i) upon subpoena by the investigatory
19 entity or the guardian, or (ii) if there is suspicion by
20 the credit union that a member who is an elderly or
21 disabled person has been or may become the victim of
22 financial exploitation. For the purposes of this item (13),
23 the term: (i) "elderly person" means a person who is 60 or
24 more years of age, (ii) "disabled person" means a person
25 who has or reasonably appears to the credit union to have a
26 physical or mental disability that impairs his or her

1 ability to seek or obtain protection from or prevent
2 financial exploitation, and (iii) "financial exploitation"
3 means tortious or illegal use of the assets or resources of
4 an elderly or disabled person, and includes, without
5 limitation, misappropriation of the elderly or disabled
6 person's assets or resources by undue influence, breach of
7 fiduciary relationship, intimidation, fraud, deception,
8 extortion, or the use of assets or resources in any manner
9 contrary to law. A credit union or person furnishing
10 information pursuant to this item (13) shall be entitled to
11 the same rights and protections as a person furnishing
12 information under the Elder Abuse and Neglect Act, the
13 Illinois Domestic Violence Act of 1986, and the Abuse of
14 Adults with Disabilities Intervention Act.

15 (14) The disclosure of financial records or
16 information as necessary to effect, administer, or enforce
17 a transaction requested or authorized by the member, or in
18 connection with:

19 (A) servicing or processing a financial product or
20 service requested or authorized by the member;

21 (B) maintaining or servicing a member's account
22 with the credit union; or

23 (C) a proposed or actual securitization or
24 secondary market sale (including sales of servicing
25 rights) related to a transaction of a member.

26 Nothing in this item (14), however, authorizes the sale

1 of the financial records or information of a member without
2 the consent of the member.

3 (15) The disclosure of financial records or
4 information as necessary to protect against or prevent
5 actual or potential fraud, unauthorized transactions,
6 claims, or other liability.

7 (16)(a) The disclosure of financial records or
8 information related to a private label credit program
9 between a financial institution and a private label party
10 in connection with that private label credit program. Such
11 information is limited to outstanding balance, available
12 credit, payment and performance and account history,
13 product references, purchase information, and information
14 related to the identity of the customer.

15 (b)(1) For purposes of this paragraph (16) of
16 subsection (b) of Section 10, a "private label credit
17 program" means a credit program involving a financial
18 institution and a private label party that is used by a
19 customer of the financial institution and the private label
20 party primarily for payment for goods or services sold,
21 manufactured, or distributed by a private label party.

22 (2) For purposes of this paragraph (16) of subsection
23 (b) of Section 10, a "private label party" means, with
24 respect to a private label credit program, any of the
25 following: a retailer, a merchant, a manufacturer, a trade
26 group, or any such person's affiliate, subsidiary, member,

1 agent, or service provider.

2 (c) Except as otherwise provided by this Act, a credit
3 union may not disclose to any person, except to the member or
4 his duly authorized agent, any financial records relating to
5 that member of the credit union unless:

6 (1) the member has authorized disclosure to the person;

7 (2) the financial records are disclosed in response to
8 a lawful subpoena, summons, warrant, citation to discover
9 assets, or court order that meets the requirements of
10 subparagraph (d) of this Section; or

11 (3) the credit union is attempting to collect an
12 obligation owed to the credit union and the credit union
13 complies with the provisions of Section 2I of the Consumer
14 Fraud and Deceptive Business Practices Act.

15 (d) A credit union shall disclose financial records under
16 subparagraph (c)(2) of this Section pursuant to a lawful
17 subpoena, summons, warrant, citation to discover assets, or
18 court order only after the credit union mails a copy of the
19 subpoena, summons, warrant, citation to discover assets, or
20 court order to the person establishing the relationship with
21 the credit union, if living, and otherwise his personal
22 representative, if known, at his last known address by first
23 class mail, postage prepaid unless the credit union is
24 specifically prohibited from notifying the person by order of
25 court or by applicable State or federal law. In the case of a
26 grand jury subpoena, a credit union shall not mail a copy of a

1 subpoena to any person pursuant to this subsection if the
2 subpoena was issued by a grand jury under the Statewide Grand
3 Jury Act or notifying the person would constitute a violation
4 of the federal Right to Financial Privacy Act of 1978.

5 (e)(1) Any officer or employee of a credit union who
6 knowingly and wilfully furnishes financial records in
7 violation of this Section is guilty of a business offense and
8 upon conviction thereof shall be fined not more than \$1,000.

9 (2) Any person who knowingly and wilfully induces or
10 attempts to induce any officer or employee of a credit union to
11 disclose financial records in violation of this Section is
12 guilty of a business offense and upon conviction thereof shall
13 be fined not more than \$1,000.

14 (f) A credit union shall be reimbursed for costs which are
15 reasonably necessary and which have been directly incurred in
16 searching for, reproducing or transporting books, papers,
17 records or other data of a member required or requested to be
18 produced pursuant to a lawful subpoena, summons, warrant,
19 citation to discover assets, or court order. The Secretary and
20 the Director may determine, by rule, the rates and conditions
21 under which payment shall be made. Delivery of requested
22 documents may be delayed until final reimbursement of all costs
23 is received.

24 (Source: P.A. 94-495, eff. 8-8-05; 94-851, eff. 6-13-06;
25 95-661, eff. 1-1-08.)

1 (205 ILCS 305/10.1)

2 Sec. 10.1. Retention of records. Unless a federal law
3 requires otherwise, the Secretary and the Director may by rule
4 prescribe periods of time for which credit unions operating
5 under this Act must retain records and after the expiration of
6 which the credit union may destroy those records. No liability
7 shall accrue against the credit union, the Secretary ~~Director~~,
8 or this State for the destruction of records according to rules
9 of the Secretary ~~Director~~ promulgated under the authority of
10 this Section. In any cause or proceeding in which any records
11 may be called in question or be demanded from any credit union,
12 a showing of the expiration of the period so prescribed shall
13 be sufficient excuse for failure to produce them.

14 (Source: P.A. 92-608, eff. 7-1-02.); and

15 on page 22, line 10, by replacing "Secretary ~~Director~~" with
16 "Secretary, the Director"; and

17 on page 35, line 12, by replacing "Secretary ~~Director~~" with
18 "Secretary and the Director"; and

19 on page 42, line 15, by replacing "Director" with "Secretary";
20 and

21 on page 77, line 22, after "his", by inserting "or her"; and

1 on page 94, by replacing lines 8 through 18 with the following:

2 "(3) If a person or group of persons against whom the
3 Secretary ~~Director~~ issued the cease and desist order
4 persists in the violation, then the Secretary ~~Director~~ may
5 impose a civil penalty of up to \$10,000 for each violation.
6 Each day that a person or group of persons is in violation
7 of this Section constitutes a separate violation of this
8 Section and each instance in which marketing material or a
9 solicitation is sent in violation of this subsection (c)
10 constitutes a separate violation of this Section.

11 (d) The Secretary and the Director of the Division of
12 Financial Institutions may adopt rules to administer the
13 provisions of this Section."